

PROTECTING ★ THE ★ UNPROTECTED

# Fair Employment Guide for Business Owners

**An Overview of Ohio's Fair Employment Laws**

Tips on how to address personnel matters  
before they become lawsuits



**DAVE YOST**

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Dear Ohio Employer,

Business laws cover not only the interaction between companies and consumers but also the relationship between employers and employees.

This guide provides an overview of Ohio's fair-employment laws and offers tips on how to avoid problems that could potentially lead to lawsuits.

Employment discrimination occurs when an employer treats an employee or applicant differently based on race, color, religion, sex, national origin, disability, age, ancestry and/or military status.

To help employers stay informed of fair-employment laws, the Civil Rights Section of the Ohio Attorney General's Office conducts free presentations on employment-related topics.

To reach my staff, call 614-466-7900. We are here to be helpful, and I encourage you to take advantage of our expertise in the area of employment law.

Respectfully yours,

A handwritten signature in blue ink that reads "Dave Yost".

Dave Yost  
Ohio Attorney General

## Discrimination law

Under Ohio law, employment discrimination, which is unlawful, occurs when an employer treats an employee or applicant for employment differently based on race, color, religion, sex, national origin, disability, age, ancestry and/or military status. These categories are called “protected classes.”<sup>1</sup>

Ohio employment laws are designed to protect people who are denied employment based on myths, stereotypes or prejudices against a group or class of people.<sup>2</sup>

(Federal employment laws that overlap with Ohio laws are summarized in the appendix.)

Some important legal issues to know:

- **Protection for all:** Ohio’s fair-employment laws aim to protect employers and employees. They encourage employment decisions based on job performance and qualifications, not subjective bias about an entire class — such as race, sex or religion.

Because everyone falls under at least two protected classes (race and sex, for example), every person in Ohio is protected against unlawful employment discrimination. For example: Because color has nothing to do with an individual’s ability to perform a particular job, race should not be a reason for an employment decision. Such reasoning also applies to the other protected classes.

- **“At-will” considerations:** Many people erroneously think that employment in an at-will state means that employment decisions can be made for any reason, but that is not the case. If there is no employment contract, at-will employment means that employers can terminate employment for a good reason, a bad reason or for no reason. However, at-will employment does not permit unlawful reasons for terminations. In other words, even in an at-will employment state such as Ohio, employment decisions cannot be based upon race, sex or any other protected characteristic.
- **Ignorance of the law:** Ignorance will not protect an employer in court. Knowledge of the laws is important for businesses, as it will discourage lawsuits.

### Common questions

**Q: I employ only three other people. Am I covered by Ohio’s fair employment laws?**

A: Yes. In Ohio, employers with four or more employees (yourself included) are covered.

**Q: Am I covered if my company is located in another state?**

A: If you conduct business in Ohio and the alleged discriminatory act took place here, you are covered by Ohio’s fair employment laws.

**Q: Am I liable if one of my employees discriminates against a co-worker?**

A: Maybe. In general, if an employer is aware of unlawful actions and fails to stop them, the employer can be held liable; likewise, an employer might be liable when the person who is discriminating is a supervisor.

# Interviews

Interviews should be used to screen applicants based on their skills, relevant training and experience. You should ask interview questions that elicit information about an applicant's qualifications. You should not ask questions that tend to reveal information about protected classes.<sup>3</sup>

For example:

- **Do ask** questions that yield information about the candidate's skill and experience for the job:
  - "What are your past working experiences?"
  - "What were your responsibilities in your most recent job?"
  - "Can you perform the duties listed in the job posting?"
  - "Are you proficient with Excel spreadsheets?"
  - "How would you respond to a customer who complains about the service of a co-worker?"
  - "A large part of the job involves public speaking. What speaking experience have you had recently?"
  
- **Don't ask** questions that elicit information unrelated to that skill and experience:
  - "Where were you born?"
  - "What type of church do you attend?"
  - "Have you had any recent or past illnesses or operations?"
  - "Do you plan to have children?"
  
- **Do ask** general questions about the candidate's ability to commit to the time requirements of the job:
  - "Are you able to work the hours listed on the job description?"
  - "Do you have reliable transportation?"
  
- **Don't ask** questions that presume an inability to commit due to membership in a certain protected class:
  - "What are your child care arrangements?"
  - "Does your husband also work?"
  - "Does your religion prevent you from working certain days?"
  - "How does a woman become interested in this kind of work?"
  
- **Do ask** whether the candidate has the necessary qualifications for the job:
  - "Are you licensed to drive a commercial vehicle?"
  - "Are you certified to operate a crane?"
  - "Do you have the required educational degrees?"
  - "Are you legally eligible to work in the United States?"

- **Don't use** language that could appear to be evidence of discrimination based on race, color, religion, sex, national origin, disability, age, ancestry or military status:
  - “When did you graduate from high school?” (age)
  - “Who will care for your children while you are at work?” (gender)
  - “How is your health?” (disability)
  - “Szerniakowitz – what kind of name is that?” (national origin)
  - “How would you feel working in an all-white area of town?” (race/color)
  - “Which holidays will you need off?” (religion)
  
- **Concerns about answers:** If an applicant mentions a protected characteristic during the interview, it is not a problem for you as an interviewer. For example, what if, in response to a question about leadership skills, an interviewee states: “I am a youth leader at my church.” The interviewer should neither comment positively nor negatively on the protected class nor use the fact of a particular religious affiliation in making an employment decision. Do not ask, “What kind of church do you attend?” or other questions about the person’s religion or church. Instead, redirect the discussion to the original focus of the question: “What leadership skills did you gain from that experience?”
  
- **Question preparation:** The interviewer should develop a set of questions before conducting interviews and ask each applicant the same ones.
  
- **Social-media considerations:** Searching for information about job applicants on social-networking websites such as LinkedIn and Facebook is common. But the sites often reveal information that a potential employer would otherwise not be able to seek during the hiring process. For example, a Facebook page may contain a picture and other personal information revealing an applicant’s race, age, gender, religious affiliation or disability, or show a family member with a disability. In general, making a hiring decision based on such factors is unlawful.

If you screen applicants on social-media sites, it is best to pre- establish objective criteria that each applicant must possess, such as a minimum level of education, residence within a certain number of miles from the worksite or specific employment experience. Also, the person who conducts the online screening process should not make the hiring decision and should not convey anything to the decision-maker from the applicant’s social-media information that would otherwise be unlawful to seek or discuss during the hiring process.

# Harassment

Harassment in the workplace hurts the employee as well as productivity.

There are basically two types of harassment. The first type occurs when an employer provides job benefits in exchange for sex.<sup>4</sup> For example, when a job promotion is given to an employee only because the employee agrees to date the supervisor, that is called “quid pro quo” sexual harassment, and it is illegal.

The second type of unlawful harassment is “hostile work environment.”<sup>5</sup> This occurs when the unwelcome behavior is based on a protected class (sex, race, religion, etc.) and is so severe or pervasive that it interferes with the victim’s ability to do his or her job. The everyday stress of work doesn’t generally create a hostile work environment. Again, the key is severity and pervasiveness.

Because this definition hinges on behavior that is either “severe” or “pervasive,” it is worth noting that “teasing” can easily slide into “bothering someone” and “bothering someone” can become unlawful “harassment.” As a result, when an employee complains of offensive behavior, the employer should take the complaint seriously.

Even if the behavior that elicits a complaint is not illegal, the behavior nevertheless bothers someone, has a negative impact on work morale and, potentially, lowers productivity. The best path is to free a workplace of such negative conduct.

Employers that have reasonable anti-harassment policies and complaint procedures have an “affirmative defense” against lawsuits alleging harassment.<sup>6</sup> A court might dismiss a harassment lawsuit if the employer has and follows anti-harassment policies and procedures. This defense requires evidence that an employer acted promptly to correct a reported problem.

To that end, a reasonable anti-harassment policy should:

- Be clear and precise.
- Be expressed in writing and broadly communicated.
- Include annual renotification and in-person training.
- Define the roles and responsibilities of all parties (i.e., the employees and the employers).
- Identify the conduct that is prohibited. (The conduct prohibited by the employer should include more than just unlawful conduct, and it should not be limited to sexual conduct. It should also prohibit conduct based on race, religion, etc.)
- Create a clearly described complaint process with multiple impartial paths to report harassment, including a path outside the direct supervisory chain.
- Explain what will be done if harassment is reported, emphasizing that a prompt and thorough investigation by impartial management officials will occur.
- Cover harassing conduct by anyone in the workplace — including the conduct of a manager, co-worker or even a nonemployee, such as a vendor.
- To the extent possible, ensure confidentiality.
- Ensure that corrective action will be taken (including, but not necessarily requiring, discipline) if harassment in violation of the policy has occurred.
- Ensure that retaliation against the employee reporting the conduct will not be tolerated. And, if retaliation does occur, it should also be reported.

# Complaints

An employer has a legal obligation to provide a work environment that is free of unlawful discrimination and harassment. You should treat all complaints seriously, even when you suspect that a complaint might be without merit.

Even when unlawful behavior has not occurred, a complaint reveals that the employee is unhappy at work. The complaint might also show that morale in general is low, and this, in turn, might affect the bottom line: productivity. An employer is wise to address complaints promptly, even when the behavior that elicits a complaint is not illegal.

Once aware of a complaint, the employer has a clear responsibility: to promptly investigate the complaint, and, if it has any merit, take corrective action to ensure that the behavior does not happen again.

## Investigation techniques

When an employee reports discrimination or harassment, you should take the complaint in a serious, nonjudgmental manner. Thank the employee for drawing it to your attention, and let the employee know that you will investigate and correct any inappropriate behavior.

You should promptly and impartially look into the allegation. Speak with the people involved as well as any co-workers or supervisors who might have witnessed the alleged behavior. Review any recordings or documents that relate to the alleged behavior. Inform everyone involved that retaliation against the employee who made the complaint (or against those participating in the investigation) will not be tolerated. If retaliation does occur, it should also be reported.

If possible, have an Equal Employment Officer conduct the investigation. An EEO is an impartial employee, connected neither with management nor human resources, who investigates allegations of discrimination and proactively addresses issues related to fairness in the workplace by conducting regular trainings and policy reviews. Not every employer is able to have an EEO on staff. Another option may be to contact an independent human resources company or a lawyer who has experience with employment discrimination cases.

## Corrective action

If you learn that an employee is being treated differently or harassed based on a protected characteristic, you must ensure that corrective action is taken to stop it and that it does not happen again. Your corrective action need not involve discipline. Taking action is important because if an employer is aware that individuals are being treated differently based on a protected characteristic and the employer fails to act, the employer could be held liable for contributing to the unlawful behavior.

On the other hand, if an investigation reveals behavior that, though improper for a workplace, did not violate the law, the employer should consider addressing the improper behavior to prevent it from escalating. Ending improper conduct before it becomes unlawful reduces the likelihood of a lawsuit and reduces tension in the workplace.

**Follow-up procedure**

Inform the employee that you have addressed the situation and ask him or her to inform you immediately if the behavior occurs again. If the behavior does occur again, the previous corrective action clearly did not work, so the employer should implement a more assertive corrective action.

**Meritless complaint**

An employee lodging a complaint should not be disciplined if the complaint ends up having no merit. Discipline under such circumstances could be considered unlawful retaliation.

**Repeated false complaints**

Although employers cannot retaliate against employees who report discrimination, employers need not ignore disruptive behavior. At some point, repeated false complaints of discrimination could cause disruption in the workplace. The employer should consult with an attorney to determine the best way to handle the situation.

## Retaliation

Retaliation occurs when an employee is punished for making a report of discrimination; it is illegal. Courts look closely at retaliation cases in order to protect the right of employees to report discrimination in the workplace.

An employee must have a good-faith belief that he or she was discriminated against based on a protected class (race, sex, age, religion, etc.) for the complaint to be considered “protected activity.” There are two types of “protected activity.” One, called “opposition,” occurs when someone opposes a discriminatory act. For example, if a business owner tells an employee not to serve customers because they are of a different race, and the employee serves the customers anyway, that employee is engaging in protected activity by opposing the employer’s discriminatory policy.

The second type of protected activity, called “participation,” occurs when someone actively participates in an activity designed to combat discrimination. In the example above, if the employee files a complaint against the business owner because of the discriminatory policy, the employee is now “participating” in a protected activity by filing a complaint and taking part in the investigation. Any co-workers who may also be involved as witnesses are also taking part in a protected activity.

Even when a complaint doesn’t result in a finding of discrimination, courts will look at whether the employer punished the person who complained simply because that person reported conduct he or she reasonably believed was discrimination.<sup>7</sup> It is also unlawful to retaliate against anyone who participates in an investigation, such as a witness or someone who assists the employee in making a complaint.

Do not react in anger if an employee reports discrimination — even if the report accuses you of discrimination. Instead, handle the situation professionally and objectively.

Employers should:

- Have a written anti-retaliation policy.
- Allow or seek independent investigations of all complaints.
- Inform all participants in the investigation that retaliation will not be tolerated, and direct them to report any retaliatory acts.
- Promptly investigate any allegations of retaliation.

By following these steps, an employer also can prevent a meritless allegation of discrimination from turning into an allegation of retaliation that has merit.

## Disabilities

If an employee or applicant for employment has a disability, the employer often will not need to do anything special. Sometimes, however, employees with disabilities may need accommodations to perform their jobs.<sup>8</sup> Ohio law requires employers to provide something reasonable to assist the employee with a disability.<sup>9</sup> You may have heard the phrase “reasonable accommodation”; it means that a person with a disability is entitled to something reasonable to help him or her do the job.

Communication is the key to determining what is “reasonable.” Communication between the employer and the employee is called the “interactive process.”

In general, the more reasonable an employer acts, the more favorably a court will view the employer’s actions. Courts routinely dismiss cases in which the employer acted in a reasonable manner in attempting to accommodate an employee with a disability, but they are equally quick to punish employers that fail to act reasonably.

If an employee informs you of the need for an accommodation, you should:

- Talk to the employee. The more open the communication, the more likely it is that a resolution will present itself.
- Ask how the requested accommodation will help. (You should not ask the employee to share his or her diagnosis or medical condition,<sup>10</sup> you should not contact the employee’s physician or treatment provider without the employee’s permission, and you should not seek medical records or detailed personal information about the nature of the disability beyond what is necessary to ascertain the need for an effective accommodation.)
- Make efforts to accommodate the employee based on what is reasonable in your situation. You need not provide the specific accommodation initially requested, just something that is reasonable. You need not go to unreasonable lengths, but you should show a spirit of cooperation to reach a reasonable solution.

If you refuse a request, you need to be confident that, were a court to review your decision, it would agree that providing an accommodation would be an “undue hardship.” An “undue hardship” means that the requested accommodation imposes a significant difficulty or expense, given the size, resources and structure of the business.<sup>11</sup> Courts do not require employers to provide accommodations that are undue hardships.

To determine whether a requested accommodation is an undue hardship, the courts suggest that you consider:

- The nature and cost of the accommodation needed.
- The overall financial resources of the business, the number of persons employed by the business and the effect on the business’s expenses and resources.
- The impact of the accommodation on the operation of the business.

Examples of “undue hardships” include:

- Unlimited medical leave (although a flexible return from leave could be a reasonable accommodation).
- Creating a flashing-light system to get the attention of a deaf employee who works in a soothing spa business, thus altering the entire character of the business (although allowing a vibrating pager in the spa for the same purpose – to alert the employee – might be a reasonable accommodation).
- Requiring a small business to purchase a new company van fully outfitted to be driven by an employee who uses a wheelchair (although allowing the employee to drive his or her own outfitted van, and be reimbursed for gas and expenses, might be a reasonable accommodation).

Under the facts of particular cases, reasonable accommodations have included:

- Reassignment to a vacant position for which the employee is qualified. (It is not necessary to create a new, unneeded position.)
- A vibrating pager or safety tape markers on the floor for a deaf employee in a factory.
- A leave of absence to obtain medical treatment.
- Job coaching.
- Shifting marginal (but not essential) job duties to other employees who can easily perform them.
- Physical access to the workplace (such as a ramp).
- A raised desk and a height-adjustable chair.
- Part-time or modified work schedules.

The purpose of the interactive communication process is to reach a reasonable solution that will enable the person to continue employment without imposing an “undue hardship” on the employer.

The decision to deny an accommodation request because of an “undue hardship” should be made only after serious consideration. Keeping a record of the process is recommended. Show your work on paper. The decision to deny a request for a reasonable accommodation can result in litigation, and you should contact an attorney before denying such a request.

## Religion

Workers are also entitled to reasonable accommodations needed for their religious beliefs.<sup>12</sup> Such accommodations are reasonable changes that eliminate the conflict between a sincere religious belief and employment. One of the more commonly requested accommodations is time off from work to satisfy a religious obligation. Other common requests involve wearing a type of religious clothing that might conflict with a dress-code policy.

As with accommodations for disabilities, the key is “reasonable.” So, if presented with a religious accommodation request, the employer should discuss the request with the employee and either provide something reasonable that resolves the conflict or be confident that providing an accommodation would be an “undue hardship” on the business.

In religious accommodation cases, courts have found that a request imposing more than a modest cost on the employer is an undue hardship, and thus not required. Although each situation is different, the U.S. Supreme Court has strongly endorsed unpaid leave as reasonable in most religious accommodation cases involving a request for time off work.<sup>13</sup>

As an example of an “undue hardship,” the duty to accommodate doesn’t require an employer to violate a collective bargaining agreement.<sup>14</sup> This issue can arise when an employee requests a different work schedule to attend to a religious obligation. If accommodating the request would result in denying employees with more seniority their contractual rights under the agreement, that particular accommodation is not reasonable and, therefore, is not required.

An employer should work with the employee to determine whether another alternative might resolve the conflict between the work rule and the religious belief. As with disability accommodations, employers need not provide the specific accommodation initially requested but should cooperatively work with the employee to find something reasonably calculated to address the request. An employer should keep records of the process.

## **Pregnancy**

Treating an applicant or employee differently because she is pregnant (or experiencing related medical conditions, such as gestational diabetes or gestational hypertension) is sex discrimination.<sup>15</sup>

### **Requirements**

Ohio law requires employers to treat pregnant employees the same as any other employee who is similar in the ability or inability to work.<sup>16</sup> This means that if you generally allow modified tasks, alternative assignments or schedule changes for a disabled or injured employee, you need to do so for a pregnant employee who requests it.

### **Maternity leave**

Although Ohio law does not require special maternity leave, other federal laws, such as the Family Medical Leave Act, may impose a duty to provide maternity leave.<sup>17</sup> As discussed before, pregnant employees must be treated the same as other employees in their ability or inability to work. Consequently, if an employer provides leave to other employees, the employer must provide the same leave to pregnant employees under the same conditions. For example, an employer that allows temporarily disabled employees to take disability leave or leave without pay must allow an employee whose working abilities are similarly compromised due to pregnancy to do the same.

### **Breastfeeding**

Ohio law does not specifically require breaks for nursing mothers. A reasonable approach is a best practice. However, if you permit employees to take coffee breaks or other breaks, it may be considered discriminatory not to permit a nursing mother to take a break to express milk. If not allowing a break to express milk would result in pain, and that pain would amount to a disability, the Americans With Disabilities Act may require the employer to permit a reasonable accommodation in such an instance.

## Factors to consider

People want to know what is expected of them before they act. Knowing a work rule avoids the appearance that the rule was crafted on the spot to justify unfair discipline. For example, in addition to having all new employees sign a work-rule acknowledgment form, you should periodically refresh all employees on rules and policies. If you have been lax in enforcing certain rules, it is never too late to start a “new day” for the rule, and inform the entire workforce that, from now on, the rule will be enforced.

Some best practices:

- **Fairness:** Treating all employees the same, under well-known rules and based on each individual’s conduct, will reduce the likelihood of allegations of discrimination.
- **Complaint procedure:** The U.S. Supreme Court has given employers a tool that, when properly used, can reduce the likelihood of lawsuits. That tool, called an “affirmative defense,” applies to employers that have a complaint procedure for workplace harassment that includes multiple ways for an employee to make a complaint. If employers have such a policy and take reasonable action when an employee reports discrimination, a court might dismiss a subsequent lawsuit alleging discrimination.
- **Be proactive:** Regular training sends the message that harassment and discrimination are taken seriously and communicates that message better than a mere written policy. Effective training engages employees, promotes interactive discussions and better informs all employees about what specific behavior is expected of them. Allowing time for questions and discussion during training will help employees better understand the issues and will help you learn the concerns of your employees.
- **Awareness:** Never ignore complaints of discrimination. Whether or not discrimination has occurred, ignoring the complaint could invite litigation.
- **Follow-up:** Make sure the person who reported the complaint is aware that you are investigating the allegation – otherwise, the person may think you have ignored the complaint. Afterward, inform the person of the results of the investigation and explain how the issue is being addressed. Let the employee know that he or she should report any future incidents, as well as any retaliation. This will help bring closure to the issue and reassure the employee that you will address any future issues.
- **Documentation:** Employers should keep records of all employee complaints and the actions taken to address each situation. Documentation created at the time of the complaint, the investigation and the resolution ensures an accurate record of all important events. Having a record of your efforts will be helpful if you ever need to defend yourself in court. For example, if you engaged in the interactive process to find a reasonable accommodation for an employee with a disability, and the employee later files a complaint alleging that you did not respond to his or her request, you should be able to show that you acted promptly and communicated with the employee about his or her needs.

## Steps to prevent lawsuits

- Tell all employees the rules up front.
- Treat all employees equally under the rules.
- Have a reasonable complaint procedure.
- Regularly train all employees.
- Take complaints seriously, investigate them and make corrections if necessary.
- Follow up with the person who made the complaint.
- Document complaints and their resolutions when they occur.

# APPENDIX

## Related federal fair-employment laws

This handbook is a general guide to Ohio's employment discrimination laws. Ohio employers should also be aware of federal employment laws that might apply. Ohio's employment discrimination laws (Ohio Revised Code 4112) incorporate most of these federal statutes. An employment discrimination lawsuit may be based on Ohio law, federal law or a combination of the two.

Here is a listing of federal fair employment laws and online resources for more information:

- **Title VII of the Civil Rights Act of 1964** prohibits employment discrimination based on race, color, religion, sex and national origin. The law applies to employers with 15 or more employees.

[www.eeoc.gov/eeoc/publications/fs-race.cfm](http://www.eeoc.gov/eeoc/publications/fs-race.cfm)

[www.eeoc.gov/eeoc/publications/fs-religion.cfm](http://www.eeoc.gov/eeoc/publications/fs-religion.cfm)

[www.eeoc.gov/eeoc/publications/fs-sex.cfm](http://www.eeoc.gov/eeoc/publications/fs-sex.cfm)

[www.eeoc.gov/eeoc/publications/fs-nator.cfm](http://www.eeoc.gov/eeoc/publications/fs-nator.cfm)

- **The Pregnancy Discrimination Act** prohibits sex discrimination on the basis of pregnancy. The law applies to employers with 15 or more employees.

[www.eeoc.gov/eeoc/publications/fs-preg.cfm](http://www.eeoc.gov/eeoc/publications/fs-preg.cfm)

[www.eeoc.gov/eeoc/publications/pregnancy\\_factsheet.cfm](http://www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm)

- **The Americans With Disabilities Act** prohibits discrimination against people with disabilities in employment, government services, public accommodations, commercial facilities and transportation. The law applies to employers with 15 or more employees.

[www.eeoc.gov/eeoc/publications/fs-ada.cfm](http://www.eeoc.gov/eeoc/publications/fs-ada.cfm)

- **The Age Discrimination in Employment Act** prohibits employment discrimination against people ages 40 and older. The law applies to employers with 20 or more employees.

[www.eeoc.gov/eeoc/publications/age.cfm](http://www.eeoc.gov/eeoc/publications/age.cfm)

- **The Family and Medical Leave Act** entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons. The law applies to employers with 50 or more employees and to employees meeting certain criteria.

[www.dol.gov/dol/topic/benefits-leave/fmla.htm](http://www.dol.gov/dol/topic/benefits-leave/fmla.htm)

- **The Equal Pay Act** prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions. Virtually all workers are covered by the Equal Pay Act.

[www.eeoc.gov/eeoc/publications/brochure-equal\\_pay\\_and\\_ledbetter\\_act.cfm](http://www.eeoc.gov/eeoc/publications/brochure-equal_pay_and_ledbetter_act.cfm)

- **The Genetic Information Nondiscrimination Act** prohibits employment discrimination based on genetic information about an applicant, employee or former employee. The law applies to employers with 15 or more employees.

[www.eeoc.gov/eeoc/publications/fs-gina.cfm](http://www.eeoc.gov/eeoc/publications/fs-gina.cfm)

- **The Uniformed Services Employment and Re-employment Rights Act** establishes the rights and responsibilities for uniformed service members and their civilian employers.

[www.dol.gov/vets/programs/userra/userra.pdf](http://www.dol.gov/vets/programs/userra/userra.pdf)

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<sup>1</sup> Ohio Revised Code Section 4112.02(A)

<sup>2</sup> *Petrilla v. Ajax Magnethermic Corp.*, 1998-Ohio-270, 82 Ohio St. 3d 61, 63, 694 N.E.2d 67, 68 (“At the core of age discrimination is a belief in the ‘inaccurate and stigmatizing stereotypes.’”); *Yamamoto v. Midwest Screw Products*, 2002-Ohio-3362, ¶ 34 (“the purpose behind allowing an individual to recover for employment discrimination based on the employer’s perception of him as being disabled is to reach those circumstances in which ‘myths, fears and stereotypes’ affect the employer’s treatment of an individual.”)

<sup>3</sup> ORC 4112.02(E)(1); *Fisher v. City of Lorain*, 2003-Ohio-526 ¶ 20 (“Fisher participated in three oral interviews where he was asked about his feelings at starting at an entry level position at his age, his ability to take orders and discipline from younger superior officers, and his tolerance for day-to-day interaction with a younger partner.”) (9th Dist. Lorain); *Doe v. Salvation Army*, 531 F.3d 355, 359 (6th Cir. 2008) (“potential employers may not ask questions ‘to determine whether the applicant is an individual with handicaps or the nature or severity of a handicap.’”)

<sup>4</sup> *Burlington Industries Inc. v. Ellerth*, 524 U.S. 742, 751, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998); *Hampel v. Food Ingredients Specialties Inc.*, 89 Ohio St.3d 169, 176, 2000-Ohio-128, 729 N.E.2d 726 (2000)

<sup>5</sup> *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 66, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986); *Hampel v. Food Ingredients Specialties Inc.*, 89 Ohio St.3d 169, 176, 2000-Ohio-128, 729 N.E.2d 726 (2000)

<sup>6</sup> *Faragher v. City of Boca Raton*, 524 U.S. 775, 807, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998); *Burlington Industries Inc. v. Ellerth*, 524 U.S. 742, 765, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998); *Edwards v. Ohio Institute of Cardiac Care*, 170 Ohio App. 3d 619, 627, 2007-Ohio-1333, ¶ 21, 868 N.E.2d 721 (2nd Dist.)

<sup>7</sup> ORC 4112.02(I); *Johnson v. University of Cincinnati*, 215 F.3d 561, 579 (6th Cir.2000); *Greer-Burger v. Temesi*, 2007-Ohio-6442, ¶ 13, 116 Ohio St. 3d 324, 327, 879 N.E.2d 174

<sup>8</sup> ORC 4112.01(A)(13); ORC 4112.02(A); Ohio Administrative Code 4112-5-08(E)

<sup>9</sup> ORC 4112.02(A); OAC 4112-5-08(E)(1); *Shaver v. Wolske & Blue*, 138 Ohio App. 3d 653, 663 742 N.E. 2d 164 (10th Dist. 2000) (“This court has recognized the employer’s duty to accommodate an employee’s disability”)

<sup>10</sup> Americans With Disabilities Act, 42 U.S.C. § 12112(d) (“The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.”); Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff-1(b)

<sup>11</sup> OAC 4112-5-08(E); *Rector v. Ohio Bur. of Workers’ Comp.*, 2010-Ohio-2104, ¶ 12 (“An employer must make reasonable accommodation to the disability of an employee or applicant, unless the employer can

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demonstrate that such an accommodation would impose an undue hardship on the conduct of the employer's business.”)

<sup>12</sup> *Trans World Airlines Inc. v. Hardison*, 432 U.S. 63, 72, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977); *Ward v. Hengle*, 124 Ohio App. 3d 396, 404, 706 N.E. 2d 392 (9th Dist. 1997)

<sup>13</sup> *Ansonia Board of Education v. Philbrook*, 479 U.S. 60, 70-71, 107 S.Ct. 367, 93 L.Ed.2d 305 (1986) (“We think that the school board policy in this case, requiring respondent to take unpaid leave for holy day observance that exceeded the amount allowed by the collective-bargaining agreement, would generally be a reasonable one. ... But unpaid leave is not a reasonable accommodation when paid leave is provided for all purposes except religious ones.”)

<sup>14</sup> *Trans World Airlines Inc. v. Hardison*, 432 U.S. 63, 79, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977)

<sup>15</sup> ORC 4112.01(B); 4112.02(A); OAC 4112-5-05(G); *McFee v. Nursing Care Management of America Inc.*, 126 Ohio St.3d 183, 190, 2010-Ohio-2744, ¶ 35, 931 N.E.2d 1069 (2010)

<sup>16</sup> R.C. 4112.01(B); *Young v. United Parcel Service Inc.*, 135 S.Ct. 1338, 1351, 191 L.Ed.2d 279 (2015); *McFee v. Nursing Care Management of America Inc.*, 126 Ohio St.3d 183, 185-186, 2010-Ohio-2744, ¶ 11, 931 N.E.2d 1069 (2010)

<sup>17</sup> Family Medical Leave Act, 29 U.S.C. §§ 2601–2654



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# **Fair Employment Guide** for Business Owners

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